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East Harlem MEC Parcel C, L.P. v. Smalls

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East Harlem MEC Parcel C, L.P. v Smalls
2024 NY Slip Op 50317(U)
Decided on March 25, 2024
Appellate Term, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on March 25, 2024
SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT
PRESENT: Tisch, J.P., James, Perez, JJ.
571371/23

East Harlem MEC Parcel C, L.P., Petitioner-Landlord-Appellant,
against
Reggie Smalls, Respondent-Tenant-Respondent, - and -
John Doe and Jane Doe, Respondents-Tenants-Undertenants.

Landlord appeals from an order of the Civil Court of the City of New York, New York County (Frances A. Ortiz, J.), dated September 14, 2023, which granted tenant's motion to dismiss the nonpayment petition pursuant to CPLR 3211(a)(1) and (7).

Per Curiam.

Order (Frances A. Ortiz, J.), dated September 14, 2023, affirmed, with \$10 costs.

Civil Court properly granted tenant's motion to dismiss the nonpayment petition. The evidentiary submissions conclusively demonstrate, and it is essentially undisputed, that after the 2011 certificate of occupancy was issued, the subject building had undergone a "type 1" alteration, including the addition of an eating and drinking establishment on the first floor; and that temporary certificates of occupancy issued between 2013 and 2015 had all expired and no new certificate of occupancy had been issued. Because the building lacks a valid certificate of occupancy, landlord is precluded from seeking to recover rent from tenant (*see* Multiple Dwelling Law §§ 301, 302[1][a],[b]; [Chazon, LLC v Maugenest](#), 19 NY3d 410, 415 [2012]; [Barrett Japaning, Inc. v Bialobroda](#), 190 AD3d 544 [2021]; [Matter of 49 Bleecker](#),

[Inc. v Gatién, 157 AD3d 619](#) [2018]), even though tenant's apartment may not have been affected by the alterations (*see Ormonde Equities LLC v Jacoby, 81 Misc 3d 137*[A], 2023 NY Slip Op 51416[U] [App Term, 1st Dept 2023]; *West 48th Holdings LLC v Eliyahu, 64 Misc 3d 133*[A], 2019 NY Slip Op 51066[U] [App Term, 1st Dept 2019]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur I concur I concur

Decision Date: March 25, 2024

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